

LC2313

SENATE LOCAL GOVERNMENT

EXHIBIT NO. 5

DATE 3.9.09

BILL NO. SB433

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing an opencut fund and annual fee; providing an appropriation; exempting opencut operations from the resource indemnity and ground water assessment tax; revising opencut permitting process; amending sections 15-38-104, 15-38-113, 82-4-405, 82-4-424, 82-4-432, and 82-4-437, MCA; and providing an immediate effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Opencut fund -- use of fund. (1)**

There is an account in the state special revenue fund established by 17-2-102 to be known as the opencut fund.

(2) There must be deposited in the account money received from the fee established in 82-4-437.

(3) Money in the fund must be spent for the purposes of Title 82, chapter 4, part 4.

Section 2. Section 15-38-104 , MCA, is amended to read:

"15-38-104. Tax on mineral production. (1) Except as provided in 15-38-113 and subsections (2) through (5) of this section, the annual tax to be paid by a person engaged in or

carrying on the business of mining, extracting, or producing a mineral is \$25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of \$5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is \$25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4% of the gross value of product in excess of \$625; and

(b) coal is \$25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4% of the gross value of product in excess of \$6,250.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is \$25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year

immediately preceding at the rate of 2% of the gross value of product in excess of \$1,250.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of quicklime is \$25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10% of the gross value of product in excess of \$250.

(5) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing industrial garnets and associated byproducts is \$25 plus an additional amount computed on the gross value of product for industrial garnets and associated byproducts derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1% on the gross value of product in excess of \$2,500."

{Internal References to 15-38-104: None.}

Section 3. Section 15-38-113 , MCA, is amended to read:

"15-38-113. Exemption from resource indemnity and ground water assessment tax. The following persons are exempt from the resource indemnity and ground water assessment tax:

(1) A a person who has paid the license tax on a metal mine under the provisions of Title 15, chapter 37, part 1; ~~is exempt from the resource indemnity and ground water assessment tax.~~

(2) A a person who has paid the tax on oil and natural gas production under the provisions of Title 15, chapter 36, part 3,
~~is exempt from the resource indemnity and ground water assessment tax.; or~~

(3) a person who holds a permit pursuant to Title 82, chapter 4, part 4, except for a person who mines, extracts, or produces bentonite."

{ Internal References to 15-38-113: None. }

Section 4. Section 82-4-405 , MCA, is amended to read:

"82-4-405. Inapplicability to government. The provisions of this part relating to fees ~~or~~ bonds do not apply to the federal government or its agencies, the state of Montana, counties, cities, or towns."

{ Internal References to 82-4-405: None. }

Section 5. Section 82-4-424 , MCA, is amended to read:

"82-4-424. Receipt and expenditure of funds -- disposition of penalties and other money. (1) The department may receive any federal funds, state funds, or any other funds for the reclamation of affected land. The department may cause the reclamation work to be done by its employees, by employees of other governmental agencies, by soil conservation districts, or through contracts with qualified persons.

(2) All penalties and other money paid under the provisions of this part, except annual fees, must be deposited in the

environmental rehabilitation and response account in the state special revenue fund provided for in 75-1-110. Funds held by the department as bond or as a result of bond forfeiture that are no longer needed for reclamation and for which the department is not able to locate a surety or other person who owns the funds after diligent search must be deposited in the environmental rehabilitation and response account in the state special revenue fund.

(3) Annual fees must be deposited in the opencut fund established by [section 1] and must be spent for the purposes of this part."

{ Internal References to 82-4-424:

75-1-110x 75-1-110 x 82-4-371x 82-4-445x }

Section 6. Section 82-4-432 , MCA, is amended to read:

"82-4-432. Application for permit -- contents -- issuance - amendment. (1) An application for a permit must be made using forms furnished by the department and must contain the following:

(a) the name of the applicant and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the estimated volume of overburden and materials to be removed;

(d) the location of the proposed opencut operation by legal description and county;

(e) the date when the opencut operation is proposed to commence; and

(f) a statement that the applicant has the legal right to mine the designated materials in the lands described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a statement from the local governing body having jurisdiction over the area to be mined certifying that the proposed sand and gravel opencut operation complies with applicable local zoning regulations adopted under Title 76, chapter 2;

(c) a plan of operation ~~that meets the requirements of 82-4-434; and~~

(d) written documentation that the landowner has been consulted about the proposed plan of operation; and

(e) documentation that public notice was provided pursuant to subsection (3), including a list of property owners given notice by mail.

(3) The public notice required by subsection (2) must include:

(a) the name, address, and telephone number of the applicant;

(b) a description of the acreage, the estimated volume of overburden and materials to be removed, the type of materials to be removed, facilities, duration of activities, and main access point of the proposed opencut operation;

(c) a legal description of the proposed opencut operation

and a map showing the location of the proposed opencut operation and immediately surrounding property; and

(d) on a form provided by the department, information on how to request a public meeting pursuant to this section.

(4) To provide public notice required by subsection (2), the applicant shall:

(a) publish notice at least twice in a newspaper of general circulation in the locality of the proposed opencut operation, except that a legal description of the opencut operation may be substituted for the map required in subsection (3);

(b) mail the notice by first-class mail to the board of county commissioners of the county in which the proposed opencut operation is located and to property owners within one-half mile of the boundary of the proposed opencut operation using the most current known property owners of record as shown in the records of the county clerk and recorder in the county where the proposed opencut operation is located; and

(c) post the notice in at least two prominent locations at the site of the proposed opencut operation, including near a public road if possible.

(5)(a) The department shall hold a public meeting either at the applicant's request or upon the request of 30% of the property owners within one-half mile of the proposed opencut operation made within 30 days of the mailing of the public notice.

(b) The department shall allow for public comment at a

public meeting held pursuant to this subsection.

(6) A public meeting, if held, must occur within the period of time allotted pursuant to this section for processing a permit application

(7) Upon receipt of an application, the department shall post the application and related information to its website. The department shall update the website when an application is complete and when an application is acceptable.

~~(3)~~(8) If, prior to applying for a permit, a person notifies the department of the intention to submit an application and requests that the department examine the area to be mined, the department shall examine the area and make recommendations to the person regarding the proposed opencut operation. The person may request a meeting with the department. The department shall hold a meeting if requested.

~~(4)~~(9) (a) (i) Except as provided in 75-1-208(4)(b), upon receipt of an application containing all items listed in subsections (1) and (2), the department shall, within 30 days, review the application, ~~inspect the proposed site,~~ and notify the person as to whether or not the department believes that the application is acceptable complete. An application is ~~acceptable complete~~ complete if it ~~complies with all requirements of~~ contains the items listed in subsections (1) and (2). If the department determines that the application is not ~~acceptable complete~~, the department shall ~~include in the notification~~ notify the applicant in writing and include a detailed identification of all

deficiencies.

(ii) The time limits provided in subsection (9)(a)(i) apply to each submittal of the application until the department determines that the application is complete.

(iii) A determination that an application is complete does not ensure that the application is acceptable and does not limit the department's ability to request additional information during the review process within the timelines provided in subsection (9(c)).

(iv) The department may declare an application abandoned and void if the applicant fails to respond to the department's written request for more information within 1 year.

(b) The department shall determine if the application warrants an extended review pursuant to [section 7]. If an extended review is not warranted, the application must be processed in accordance with this section.

~~(b)(c)~~ Within 30 days of receipt of the applicant's responses to the identified deficiencies a complete application, the department shall review the application, inspect the proposed site if the department determines an inspection is necessary, and notify the applicant if as to whether or not the application is acceptable or not. If the application is unacceptable, the notice must include a detailed explanation of the remaining deficiencies. An application is acceptable if it complies with the requirements of subsections (1) and (2), including a plan of operation that satisfies the requirements of 82-4-434. If the

department determines that the application is not acceptable, the department shall notify the applicant in writing and include a detailed identification of all deficiencies.

(d) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

~~(e)~~(e) The department may for sufficient cause extend either or both of the 30-day review periods in subsection (9)(c) or (9)(d) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original 30-day period. The department shall include in the notification of extension the reason for the extension.

~~(d)~~(f) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

~~(5)~~(10)(a) An operator may amend a permit by submitting an amendment application to the department. Upon receipt of the amendment application, the department shall review it in accordance with the requirements and procedures in ~~subsection~~ subsections (3) and (4). If the amendment application is acceptable, the department shall issue an amendment to the original permit.

(b) An application for an amendment is not subject to the public notice and public meeting requirements of this section if a proposed increase in permitted acreage is less 50% of the permitted acreage in the original permit."

{ Internal References to 82-4-432:

75-1-208x 76-2-209x }

NEW SECTION. **Section 7. Extended review -- criteria -- timeframes.** (1) The department may subject an opencut application to an extended review if:

(a) the department determines that substantial issues are not addressed in the plan of operation submitted with the application;

(b) the department determines that comments received at a public meeting held pursuant to 82-4-432 reveal substantial issues not addressed in the plan of operation submitted with the application; or

(c) the duration of the proposed opencut operation is expected to exceed 5 years.

(2) (a) For a complete application subject to an extended review, the department shall within 90 days review the application, inspect the proposed site if the department determines an inspection is necessary, and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the notice must include a detailed explanation of the deficiencies. An application is acceptable if it complies with the requirements of subsections (1) and (2),

including a plan of operation that satisfies the requirements of 82-4-434.

(b) Within 30 days of receipt of the applicant's response to the identified deficiencies, the department shall review the responses and notify the applicant as to whether or not the application is acceptable. If the application is unacceptable, the department shall notify the applicant in writing and include a detailed identification of the deficiencies.

(c) The department may for sufficient cause extend either or both of review periods in subsection (2)(a) or (2)(b) for an additional 30 days if it notifies the applicant of the extension prior to the end of the respective original period. The department shall include in the notification of extension the reason for the extension.

(d) If the application is acceptable, the department shall issue a permit to the operator that entitles the operator to engage in the opencut operation on the land described in the application.

Section 8. Section 82-4-437 , MCA, is amended to read:

"82-4-437. Annual report -- fee. (1) For each permitted operation, the operator shall file an annual report on a form furnished by the department. The report must contain the information and be submitted at times provided in rules of the board.

(2) Each permitted operation shall submit with the annual

report a fee of 2.5 cents per cubic yard of material mined during the period covered by the report."

{ Internal References to 82-4-437:

82-4-442x }

NEW SECTION. **Section 9. Appropriation.** For the purposes listed in [section 1] there is appropriated to the department of environmental quality:

- (1) \$272,000 in fiscal year 2010; and
- (2) \$311,000 in fiscal year 2011.

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 and 7] are intended to be codified as an integral part of Title 82, chapter 4, part 4, and the provisions of Title 82, chapter 4, part 4, apply to [sections 1 and 7].

NEW SECTION. **Section 11. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 12. Applicability.** [Sections 6 and 7] apply to permit applications and amendment applications pursuant to 82-4-432 submitted after [the effective date of this act].

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